

EXHIBIT 37 LC1643.01
DATE 2-21-13
HB 344HB BILL NO. 344INTRODUCED BY Brian Hoover
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO AGRICULTURAL COMMODITY DEALERS; INCREASING BONDING REQUIREMENTS; PROVIDING PRODUCER PROTECTIONS IN CASE OF BANKRUPTCY; AND AMENDING SECTIONS 80-4-405, 80-4-422, AND 80-4-604, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Bankruptcy as grounds for cancellation. (1) If a commodity dealer files for bankruptcy, a contract or any part of a contract for delivery of a commodity may be canceled without penalty to the producer if the cancellation involves only the remaining unperformed portions of the contract. A cancellation under this section:

(a) is not a breach of contract;

(b) is allowed even if not explicitly provided for in the contract.

(2) In the event of a cancellation, a commodity dealer remains responsible for payment that is due to the producer for delivered portions of the contract.

Section 2. Section 80-4-405, MCA, is amended to read:

"80-4-405. Maximum bond amount. The maximum amount of any public warehouse operator bond may not exceed \$1 million and the maximum amount of a commodity dealer bond may not exceed \$4 \$3 million, except:

(1) any bonds compensating for equity or working capital deficiencies prescribed in parts 5 and 6 of this chapter must be added to the maximum bond amount. If the public warehouse operator is also licensed as a commodity dealer, only one bond amount is required.

(2) the maximum bond amount must be adjusted each year based upon the percentage increase or decrease in the annual average index of prices received by Montana farmers for food and feed grains as computed by the Montana crop and livestock reporting service."

Section 3. Section 80-4-422, MCA, is amended to read:

1 **"80-4-422. Delayed payment or purchase contracts.** (1) A commodity dealer who purchases
2 agricultural commodities by purchase contract shall maintain books, records, and other documents as required
3 by the department to establish compliance with the provisions of this section.

4 (2) In addition to other required information, a purchase contract must contain or provide for all of the
5 following:

6 (a) the seller's and purchaser's name and address;

7 (b) the conditions of delivery;

8 (c) the amount and kind of agricultural commodities delivered;

9 (d) the price per unit or basis of value;

10 (e) the date payment is to be made; and

11 (f) a notice of financial risk involved in the delayed payment contract, including information that details
12 the availability of insurance to protect the seller's risk. The notice must be in a form the department shall adopt
13 pursuant to the rulemaking authority provided in 80-4-403.

14 (3) Title to all agricultural commodities sold by purchase contract is in the purchaser as of the time the
15 agricultural commodities are delivered to and in physical control of the purchaser unless the contract provides
16 otherwise. The contract must be signed by both parties and executed in duplicate. One copy must be retained
17 by the commodity dealer, and one copy must be provided to the seller. Upon revocation, suspension, or
18 termination of a commodity dealer's or warehouse operator's license, the department may advance the payment
19 date for all delayed payment contracts to a date not later than 30 days following the effective date of the
20 revocation, suspension, or termination. When not otherwise provided, the purchase price for all agricultural
21 commodities must be determined as of the effective date of revocation, suspension, or termination in accordance
22 with all other provisions of the contract. However, if the business of the commodity dealer is sold to another
23 licensed commodity dealer, purchase contracts may be assigned to the purchasing commodity dealer.

24 (4) Any contract that does not satisfy the conditions imposed by this part is considered a sale other than
25 a purchase contract and is subject to the provisions of 80-4-608."

26
27 **Section 4.** Section 80-4-604, MCA, is amended to read:

28 **"80-4-604. Bonding requirement amounts -- cancellation.** (1) An applicant for a license to operate
29 as a commodity dealer shall, before a license may be issued, file with the department a surety bond or its
30 equivalent, as established by department rule, payable to the state.

1 (2) Except as provided in 80-4-601(5)(b):

2 (a) the bond for a commodity dealer may not exceed ~~2%~~ 5% of the value of the agricultural commodities
3 purchased by the commodity dealer from the producer during the previous 12-month period;

4 (b) the bond for all new applicants is ~~2%~~ 5% of the estimated value of all agricultural commodities to be
5 purchased during the coming 12-month period; and

6 (c) the minimum amount of bond required by any commodity dealer is \$20,000 and the maximum is
7 prescribed in 80-4-405.

8 (3) A surety shall notify the commodity dealer and the department by certified mail at least 60 days prior
9 to the cancellation of the bond. A commodity dealer's bond filed with the department is continuous until canceled
10 by the surety upon 60 days' notice; however, cancellation does not terminate any liability of the surety incurred
11 prior to the date of cancellation."

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13 **NEW SECTION. Section 5. Codification instruction.** [Section 1] is intended to be codified as an
14 integral part of Title 80, chapter 4, and the provisions of Title 80, chapter 4, apply to [section 1].

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